

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2013-00032, for a Special Permit to extend existing hours of operation to create a new delivery only Class II restaurant, at 360 College Street (Map 15A, Parcel 28, COM Zoning District), with the following conditions:

1. The hours of operation shall be limited to the following:
 - a. No dine-in service after 11:30 p.m.
 - b. Delivery shall end by 3:00 a.m., seven days per week
2. No alcohol shall be served or consumed on the premises.
3. The interior of the restaurant shall be configured substantially in accordance with the floor plan prepared by Kraus Fitch Architects, dated June 24, 2013. There shall be seating for no more than 12 people.
4. A minimum of 15 parking spaces shall be delineated on the property. The area on the west side of the area which is not delineated parking may be used for the parking of one employee vehicle.
5. The restaurant use shall be managed in accordance with the Management Plan approved by the Zoning Board of Appeals on August 1, 2013.
6. The dumpster area associated with this use, located on the west side of the building, shall be kept and maintained free and clear of litter and debris.
7. All exterior lighting associated with this use shall be downcast. The exterior signs shall be extinguished at 3:00 a.m. daily.
8. Upon any change of ownership, a Management Plan shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting. The purpose of the public meeting is for the Board to determine whether any changes are de minimus, or significant enough to require modification of the Special Permit.

Eric Beal 
Eric Beal, Chair
Amherst Zoning Board of Appeals

8/26/13
DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Joseph Bowman d/b/a Pioneer Valley Pizza
26 Clark Street, Belchertown, MA, 01007

Owner: LHB Enterprises, Inc.
45 Braintree Hill Office Park, Braintree, MA 02184

Date application filed with the Town Clerk: July 2, 2013

Nature of request: For a Special Permit to extend existing hours of operation to create a new delivery only Class II restaurant

Address: 360 College Street (Map 15A, Parcel 28, COM Zoning District)

Legal notice: Published on July 17, 2013 and July 24, 2013 in the Daily Hampshire Gazette and sent to abutters on July 15, 2013

Board members: Eric Beal, Tom Ehrgood, Mark Parent

Staff members: Jeff Bagg, Senior Planner, Robert Morra, Building Commissioner

Submissions:

1. Project Application Report, dated July 30, 2013
2. Management Plan, dated June 14, 2013
3. Existing/proposed floor plan, prepared by Kraus Fitch AIA, dated June 24, 2013
4. Applicant email/parking calculations

Site Visit: July 31, 2013

Eric Beal, Tom Ehrgood, and Mark Parent met Joseph Bowman onsite. The Board members observed the location of the property on the north side of College Street, and the following:

- The interior of the establishment with three tables and seating for 12 patrons.
- The location of the existing kitchen and serving counter.
- The exterior of the property including the existing building mounted and window signs, location of the dumpster and waste oil storage,
- The 15 painted parking spaces and open areas along the east and west sides of the building. Two vehicles were parked outside of the delineated spaces adjacent to the east side of the building.

Public Hearing: August 1, 2013

The applicant, Joseph Bowman, was accompanied by Brian Covell. The project was described the proposal in terms of the submitted materials, summarized as follows:

- The restaurant currently operates until 11:30 p.m. as a Class I restaurant. The restaurant was opened under a Site Plan Review waiver by the Building Commissioner under footnote 1 of Section 3.3.

- No interior or exterior changes are proposed. Specifically, the request involves allowing deliveries to occur after 11:30 a.m. to 3:00 a.m., seven days per week.
- There are other establishments, including D.P. Dough and Wings Over Amherst, that operate food delivery service until 3:00 a.m.
- The number of employees is less during the day and includes up to three delivery drivers and two kitchen staff during busy weekend and evening hours.
- There are 15 delineated parking spaces on-site. Although Section 7.002 requires only four parking spaces for the restaurant (based on four seats), the parking need for the use is eight parking spaces (three for delivery drivers, two for cooking staff and three for patrons). As described in the written submission and the Project Application Report, Portabella's (considered to be retail) requires five spaces and the Bank of America ATM requires one space leaving one additional parking space.

The Board discussed the parking and determined that eight spaces for this use are adequate. The Board noted that the vacant space in the building was not accounted for, but that peak demand for parking would likely occur at different times, which would benefit the future parking calculations for the vacant space. The Board discussed employee parking outside of the delineated spaces on the west side of the building. It was noted that the Project Application Report contained a photograph of a vehicle parked adjacent to the west side of the building. The applicant stated that, although not required, it would be useful to allow an employee to parking in that space.

The Board discussed signs and asked whether the existing window sign "Free deliveries 4 – close" would remain. The applicant stated that the "4- close" would be removed as it wasn't necessary, but would keep the "free deliveries" part of the sign.

Specific Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 - The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town, as deemed appropriate by the Special Permit Granting Authority; The proposal is compatible with existing Uses and other Uses permitted by right in the same District. The proposal to expand the hours of operation for deliver service is suitably located and is compatible with existing uses based on the applicant's statement that the location had been used for a restaurant for approximately 42 years and because it is located in the Commercial Zoning District.

10.382 & 10.383 - The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians.

The proposal complies with these requirements for the following reasons:

- The proposals are limited to the extension of the hours of operation for delivery service and not dine-in food service. The operation is within the Commercial Zoning District where there are not residential uses in the immediate vicinity.
- The subject property has been a long-standing restaurant use and it provides for adequate parking for all employees, including delivery drivers, and customers.

10.385 & 10.393 - *The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features; The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through use of cut-off luminaries, light shields, lowered height of light poles, screening, or similar solutions.* The proposal does not involve the addition of any new exterior lights. All existing exterior lights will be downcast and the internally lit building mounted sign will be extinguished at 3:00 a.m., daily.

10.384 - *Adequate and appropriate facilities would be provided for the proper operation of the proposed use.* The proposal provides for the necessary components for a restaurant including but not limited to: dining and kitchen area, restroom, parking and trash storage. There are no physical changes required for this proposal.

10.386 - *The proposal ensures that it is in conformance with the Parking and Sign regulations (Articles 7 and 8, respectively) of this Bylaw.* The proposal provides eight delineated spaces (three for delivery drivers, two for cooking staff, and three for customers) which is necessary for the use. The remaining parking on-site is adequate for the existing retail establishment (Portabella's) and the Bank of America ATM machine. The Board found that although the parking calculations do not account for the vacant space in the building, parking for this use will likely occur at different times than the existing uses. The Board finds that the building mounted sign was approved under a building permit and is compliant with the 10% limitation of Section 8.20. The Board found that the area outside of the delineated spaces on the west side of the building was suitable for one employee parking space. The Board approved the applicant's decision to retain the "4-close" sign on the window while removing the "free delivery" from the sign.

10.387 & 10.388 - *The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements; The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, materials and equipment incidental to the normal operation of the establishment or use.* The proposal does not change the existing parking delineation or the building. The proposal provides for a designated dumpster storage area and waste oil storage area with the necessary clearance for pickup. The proposal provides for three parking spaces for delivery vehicles.

10.389 - *The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water.* The proposal provides for a designated dumpster storage area and waste oil storage area with the necessary clearance for pickup.

10.392 - *The proposal provides adequate landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage.* The proposal does not alter or remove the existing vegetation and fence along the north property line which screens it from the adjacent property.

10.398- *The proposal is in harmony with the general purpose and intent of this Bylaw, and the goals of the Master Plan.* The proposal to expand the existing uses is in harmony with the purpose of the Bylaw for the reasons stated above and the Master Plan as it provides for the "growth of an existing business".

Public Meeting – Zoning Board Decision

Mr. Beal MOVED to approve the application with conditions. Mr. Parent seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to grant a Special Permit, ZBA FY2013-00032, for a Special Permit to extend existing hours of operation to create a new delivery only Class II restaurant, at 360 College Street (Map 15A, Parcel 28, COM Zoning District), with conditions.

Eric Beal  ERIC BEAL T. Ehrgood  TOM EHRCOOD Mark Parent  MARK PARENT

FILED THIS 27th day of August, 2013 at 2:33 p.m.
in the office of the Amherst Town Clerk Sandra J. Bungen
TWENTY-DAY APPEAL period expires, September 16, 2013.
NOTICE OF DECISION mailed this 28th day of August, 2013
to the attached list of addresses by Jeffrey R. Bagg, for the Board.
COPY OF NO APPEAL issued this _____ day of _____, 2013.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2013,
in the Hampshire County Registry of Deeds.

**BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED**

Petition of Joseph Bowman d/b/a Pioneer Valley Pizza

For a Special Permit for a Special Permit to extend existing hours of operation to create a new delivery only Class II restaurant

On the premises of 360 College Street

At or on Map 15A, Parcel 28, COM Zoning District

NOTICE of hearing as follows mailed (date) July 15, 2013
to attached list of addresses and published in the Daily Hampshire Gazette
dated July 17, 2013 and July 24, 2013

Hearing date and place August 1, 2013 (Town Hall)

LEGAL NOTICE
The Amherst Zoning Board of Appeals will meet on Thursday, August 1, 2013, at 6:30 P.M. in the TOWN ROOM, Town Hall, to conduct the following business:
PUBLIC HEARING:
ZBA FY2013-00030 - Integrity Development and Construction - For a Special Permit to convert a dimensionally non-conforming, existing detached structure, into a new owner occupied dwelling unit, as converted dwelling under Section 3.3241 and 9.22 of the Zoning Bylaw, at 52 North Prospect Street (Map 11C, Parcel 213, R-G Zoning District)
ZBA FY2013-00031 - Kuhn Riddle Architects - For a Special Permit to modify conditions of ZBA FY1999-66 to allow for the renovation and/or expansion of 9 dwelling units to provide handicapped accessibility, and site changes to improve accessibility, under Section 10.33 and 9.22 of the Zoning Bylaw, at 497 East Pleasant Street A.K.A Village Park Apartments (Map 8D, Parcel 21, R-N Zoning District)
ZBA FY2013-00032 - Joseph Bowman d/b/a Pioneer Valley Pizza - For a Special Permit to extend existing hours of operation to create a new delivery only Class II restaurant, at 360 College Street (Map 15A, Parcel 28, COM Zoning District)
ERIC BEAL, CHAIR
AMHERST ZONING BOARD OF APPEALS
3254002 July 17, 24

SITTING BOARD and VOTE TAKEN:

A Special Permit, ZBA FY2013-00032, for a Special Permit to extend existing hours of operation to create a new delivery only Class II restaurant

Eric Beal - Yes Tom Ehrgood - Yes Mark Parent - Yes

DECISION: APPROVED with conditions as stated in permit

THE COMMONWEALTH OF MASSACHUSETTS
AMHERST

City or Town
NOTICE OF SPECIAL PERMIT
Special Permit
(General Laws Chapter 40A)

Notice is hereby given that a Special Permit has been granted
To Joseph Bowman d/b/a Pioneer Valley Pizza
Address 26 Clark Street
City or Town Belchertown, MA 01007

Identify Land Affected: 360 College Street
(Map 15A, Parcel 28, COM Zoning District)

By the **Town of Amherst Zoning Board of Appeals** affecting the rights of the owner
with respect to the use of the premises on

360 College Street Amherst
Street City or Town

The record of title standing in the name of
LHB Enterprises, Inc
Name of Owner

Whose address is 45 Braintree Hill Office Park Braintree MA 02184
Street City or Town State Zip Code

By a deed duly recorded in the
Hampshire County Registry of Deeds: Book 4909 Page 136
or

Hampshire Registry District of the Land Court, Certificate No. _____,
Book _____, Page _____

The decision of said Board is on file, with the papers, in ZBA FY2013-00032
In the office of the Town Clerk Sandra J. Burgess

Certified this _____ day of _____

Board of Appeals:

Eric Beal Chairman
(Board of Appeals)
[Signature] Clerk
(Board of Appeals)

_____ at _____ o'clock and _____ minutes _____ m.
Received and entered with the Register of Deeds in the County of Hampshire
Book _____ Page _____

ATTEST _____
Register of Deeds
Notice to be recorded by Land Owner

Town of Amherst Abutter List

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner 1</i>	<i>Owner 2</i>	<i>Address</i>	<i>City/State/Zip</i>
15C-5	BELCHERTOWN RD	CUMBERLAND FARMS INC		TAX DEPT 100 CROSSING BLVD	FRAMINGHAM, MA 01702
15A-43	10 BELCHERTOWN RD	BELCHERTOWN ROAD PARTNERSHIP LLC	C/O EAGLE CREST PROPERTY MNGMT	55 NORTH PLEASANT ST	AMHERST, MA 01002
14D-1	COLLEGE ST	AMHERST COLLEGE TRUSTEES	ATTN: COMPTROLLERS OFFICE	AMHERST COLLEGE	AMHERST, MA 01002
15A-97	COLLEGE ST	SHUMWAY, PAUL C		320 COLLEGE ST	AMHERST, MA 01002
14B-222	314 COLLEGE ST	SHUMWAY, PAUL C		320 COLLEGE ST	AMHERST, MA 01002
15A-24	330 COLLEGE ST	SHUMWAY, PAUL C		320 COLLEGE ST	AMHERST, MA 01002
15A-82	338 COLLEGE ST	SPIRIT CORP OF AMHERST		P.O. BOX 506	AMHERST, MA 01004-0506
15A-28	360 COLLEGE ST	L H B ENTERPRISES INC		3 BATTERY WHARF UNIT 3411	BOSTON, MA 02109
15C-47	381-385 COLLEGE ST	FLORENCE SAVINGS BANK		P.O. BOX 60700	FLORENCE, MA 01062
15A-42	390 COLLEGE ST	NORTHAMPTON COOPERATIVE BANK		57 KING ST	NORTHAMPTON, MA 01060
15A-26	693 MAIN ST	AMHERST HOUSING AUTHORITY		33 KELLOGG AVE	AMHERST, MA 01002
15A-247	SOUTH EAST ST	DECKER, DAVID J		P.O. BOX 229	AMHERST, MA 01004-0229
15A-147	SOUTH EAST ST	MONSEIN, MARILYN	MACCONNELL, SUSAN G	6 SOUTH EAST ST	AMHERST, MA 01002
15A-47	70 SOUTH EAST ST	TOWN OF AMHERST - SCHOOL DEPT		TOWN HALL	AMHERST, MA 01002

<i>Parcel_ID</i>	<i>Parcel_Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/ST/Zip</i>
15A-76	80 SOUTH EAST ST	TING, AGNES C & JAMES C TRUSTEES		112 HIGH POINT DR	AMHERST, MA 01002
15A-25	85 SOUTH EAST ST	SPENCE, DONNA A		P.O. BOX 506	AMHERST, MA 01004
15A-27	89 SOUTH EAST ST	FLEISCHNER, LEWIS R		89 SOUTH EAST ST	AMHERST, MA 01002
15C-6	118 SOUTH EAST ST	AMHERST AUTO EXPRESS INC		118 SOUTH EAST ST	AMHERST, MA 01002
15C-7	126 SOUTH EAST ST	MIKHCHI, AMIR & GIAHI, FATEMEH		18 FOXGLOVE LN	AMHERST, MA 01002
15C-3	133 SOUTH EAST ST	MIKHCHI, AMIR & GIAHI, FATEMEH		18 FOXGLOVE LN	AMHERST, MA 01002